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Negotiating Federal Labor Agreements: A Programmed Instruction

The Labor Relations Training Center

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LABOR RELATIONS TRAINING CENTER

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This document is intra-management guidance and is not designed for general publication.

INTRODUCTION

This is a programmed instruction course on basic Federal labor-management relations concepts essential to successful negotiations.

The course is based on Title VII of the Civil Service Reform Act (CSRA) of 1978. All of the concepts, rationales, and explanations used in this course are based on the requirements contained in Title VII. The course has been divided into the following chapters: (1) subjects for bargaining; (2) the bargaining unit; (3) official time and dues withholding; (4) the negotiated grievance procedure; and (5) the neutral parties established by Title VII of the CSRA. While the course is not designed to make the reader an expert in labor relations, it will provide a good foundation for discussion and participation in the bargaining course.

The course is structured so that each chapter builds on the knowledge transmitted in the preceding one.

To obtain maximum benefit from this course, you should be familiar with the following terms:

> Collective bargaining unit - A group of employees certified as appropriate for representation by a union for the purpose of collective bargaining.
>
> Collective bargaining agreement - A written agreement between an employer and an employee organization which is usually for a definite term, defining conditions of employment, and containing a negotiated grievance procedure. The terms "collective bargaining agreement" and "contract" are used synonymously.

The course format presents you with information regarding the Federal labor-management relations program in segments. Immediately following each segment, you will be presented with a problem situation and asked several questions on the problem. For example:

> INFORMATION: Title VII of the Civil Service Reform Act assures employees of the right to form, join, and assist a union.
>
> QUESTION: An employee under your supervision wants to join a labor organization. Do you have any right to prevent him from doing this?
>
> ANSWERS:
>
> A. Yes, because a union would make my job more difficult.
>
> B. No, but I would attempt to discourage him in every way possible.
>
> C. No, because each employee has been given this right under Title VII.

You should circle the letter which provides the best answer to the question. There is only one best answer. The correct answer and an explanation for the answer will be given on the page following the questions on each topic.

You are now ready to begin the programmed instruction. Work as fast or slow as you feel is necessary.

CHAPTER ONE

SUBJECTS OF BARGAINING

INTRODUCTION

Collective Bargaining Under the CSRA

Collective bargaining is a mutual obligation of an agency and the exclusive representative of employees to:

- o meet at reasonable times;
- o consult and bargain in good faith;
- o execute a written document at the request of either party incorporating the terms and conditions of employment.

The obligation to bargain does not require either side to agree to a specific proposal or to make concessions on every proposal.

1. Renee Alburg is the labor relations officer and chief negotiator for a small Federal agency. A union has just been elected by employees as the exclusive representative for the bargaining unit. The union has already submitted proposals for contract negotiations to Ms. Alburg and they are extensive. The agency has always had a good working relationship with its employees and the head of the agency is reluctant to negotiate a written contract with the union. He has urged Ms. Alburg to try to convince the union not to insist upon a written contract because it will make the relationship much more formal and legalistic. Does the agency have to negotiate with the union and commit any agreeements to writing?

   A. No, as long as the agency negotiates in good faith with the union there is no obligation to commit the agreement to writing.

   B. If the agency can demonstrate that it has a rational basis for not wanting to put the agreement in writing, a formal agreement is not required.

   C. Yes, in this case the parties must commit any agreement made with the union on the terms and conditions of employment to writing.

ANSWERS

1. Under Title VII, the parties are required to execute a written document incorporating the agreement reached on terms and conditions of employment. There are many instances in a labor-management relationship where the parties may reach an agreement on several issues and not commit the agreement to writing. However, in this case, where one party insists on having a written document, it would have to be written.

THE CORRECT ANSWER IS "C".

Good Faith Bargaining

Under Title VII, the obligation to bargain in good faith includes the following:

- o approaching the negotiations with a resolve to reach agreement;
- o representation by individuals prepared to discuss and negotiate on any condition of employment;
- o meeting at reasonable times and convenient places as frequently as necessary to reach agreement;
- o to furnish the exclusive representative relevant and necessary data not prohibited by law;
- o to furnish the exclusive representative relevant and necessary data not prohibited by law;
- o execution of a written document incorporating the terms agreed upon;
- o implementation of the written agreement.

2. During the early part of contract negotiations, the agency agreed to allow the union to use official time for 15 stewards. Subsequently, the management team has had second thoughts about the wisdom of agreeing to such a contract article. The negotiations are almost completed with only three articles outstanding. As part of a counterproposal, management agrees to concessions on the three articles which have not been agreed upon. In return, the number of stewards to be given official time would be cut to 10 under the management offer. The union rebukes the management offer and contends that since the agency already agreed to allow the time for 15 stewards it is negotiating in bad faith by trying to "weasel out" of its previous agreement. Is the union's charge valid?

   A. Yes, because once such an article has been agreed upon, it cannot be changed under any circumstances.

   B. Yes, because the offer is a thinly disguised effort to coerce the union into relinquishing something it already gained in negotiations and the attempt is bad faith bargaining.

   C. No, because the contract has not been signed and the management attempt to get an agreement through such a package deal is a legitimate negotiating tactic.

ANSWERS

2. The bargaining technique used by management in this case is valid. The agency is attempting to reach an agreement with its offer and the union is free to accept the offe reject it, or to come back with an offer of its own. There is not a contract until the whole agreement has been signed by the parties.

THE CORRECT ANSWER IS "C".

Bargaining Requirements

There are three categories of subjects that arise at the bargaining table. These are:

- o mandatory
- o permissive (at management's discretion)
- o prohibited

3. In recent contract proposals submitted by the union, a proposal was made to alter the way in which the paperwork of the agency was handled. The negotiating team has been considering the proposal and discussing various alternatives to the proposal with the union team. Management has now concluded that the union's proposal has no merit and has informed the union that it will not negotiate any further on the proposal because it involves a permissive area of bargaining. The union agrees that it is a permissive area but argues that since the agency has been negotiating on the proposal, it is now obligated to reach an agreement with the union. Is the union right?

   A. No. It is a permissive area of bargaining and the agency has the option of declining to negotiate in a permissive area at any time prior to reaching agreement.

   B. Yes, since the agency agreed to discuss the union's proposal, negotiations must continue until an agreement is reached.

   C. Yes, because if the union's position is legal, the agency must consider the union's proposal.

4. The union negotiating team has proposed that the union be allowed to have one observer at all merit promotion ranking panels held for vacant positions being filled in the bargaining unit. The agency refuses to accept this proposal but it does not quarrel with the union's position that the topic is a mandatory subject of bargaining. The union

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argues that since the topic is a mandatory one, the agency has the option of either accepting the offer as written or making a counteroffer which accepts the spirit of th proposal but has different specifics. Is the union's position correct?

A. No, the agency does not have to accept the concept of every union proposal which is a mandatory subject of bargaining.

B. Yes, the agency must accept the union's demand or attempt to change the specifics.

C. No, the agency must accept the union's proposal as it was originally proposed.

ANSWERS

3. The agency has the option of declining to negotiate a permissive topic of bargaining. Once an agreement has been reached and the contract has been signed, the agency does not have the option of refusing to comply with the agreement.

THE CORRECT ANSWER IS "A".

4. A mandatory subject of bargaining is one which must be discussed with the union and serious consideration must be given to the union's proposal. There is no obligation to accept a proposal made on the general concept contained in the proposal just because it is a mandatory subject of bargaining.

THE CORRECT ANSWER IS "A".

Mandatory Topics

The mandatory subjects of bargaining are:

- o personnel policies, practices and matters affecting working conditions;
- o procedures for implementing actions taken as a management right;
- o arrangements for employees affected by management's exercise of its reserved rights.

5. The union has proposed to Chief Negotiator Michael Kelly that any highly qualified candidates not selected for a position will be given a written reason by the agency for not being selected. Kelly has balked but the union argues that it is only a procedural review process and not an imposition on management's right to select an applicant. Is this a mandatory subject of bargaining?

   A. No, because management retains the right to select employees for agency jobs.

   B. No, because providing a written reason to every person not selected for a job would be a burden on the agency.

   C Yes, because it concerns a personnel policy or practice.

6. In the negotiations, the union also proposes to include an article that would prevent the agency from relocating employees until the union approved of the proposed move . Does the agency have to negotiate on this proposal?

   A. Yes, because it concerns a personnel policy, practice, or a matter affecting working conditions.

   B. No, because assignment of employees is not a mandatory topic of bargaining.

   C. Yes, because the relocation will have an effect on the grades of employees, their promotion potential, and their ability to perform their jobs.

ANSWERS

5. The union's proposal in this case is a mandatory subject of bargaining because it concerns a personnel policy or practice. If the agency believes that the proposal is unwise or too great a burden to administer, this can be used as a rationale for not accepting the proposal. It cannot, however, be used as a reason for declaring the proposal to be non-negotiable since it would be considered a procedure for implementing a management right.

   THE CORRECT ANSWER IS "C".

6. The agency does not have to negotiate with the union on the relocation of employees. While the location of employees may have an indirect impact upon employee's grades, promotion potential and their ability to perform their jobs, this is not the primary impact of the proposal. Since the proposal would have a direct impact on the management right to assign employees, it is not a mandatory topic of bargaining. Once again, there would be an obligation in every case to negotiate with the union on the impact and implementation of a new organizational structure before it was effected.

   THE CORRECT ANSWER IS "B".

Permissive Areas of Negotiation

Permissive areas of negotiation are those areas in which management may negotiate if it chooses but is not required to negotiate if it declines. These areas are:

- o numbers, types, and grades of employees;
- o positions assigned to any organizational subdivision, work project, or tour of duty;
- o technology, means, or methods of performing work.

7. In contract negotiations, the union demands that the agency halt its plans to install a new computer operation which will eliminate the need for a number of clerical positions. The union represents all of the clerical employees and the elimination of these positions will destroy the union's base of support. The union has made it clear that a failure to resolve this issue will result in an unfair labor practice charge against the agency and picketing of the agency headquarters. Is management obligated to negotiate on the union's proposal?

   A. Yes. The topic is a mandatory subject of bargaining and failure to negotiate on the problem will be construed as anti-union behavior on the part of the agency's management.

   B. Yes, because the proposal concerns a personnel policy, practice, or a matter affecting working conditions.

   C. No, because the proposal concerns the technology of performing work.

ANSWERS

7. Since the union's proposal concerns the use of computers versus the use of additional employees, the proposal concerns the technology of performing the work and does not have to be negotiated with the union. Keep in mind, however, that if management decides to use a new computer operation, it will have to negotiate with the union on the impact and implementation of the new program even though the decision itself is not negotiated.

THE CORRECT ANSWER IS "C".

Management Rights

Title VII specifies that a number of rights are vested with agency management and provides that these rights cannot be the subject of bargaining. These rights are:

- o determine mission
- o determine budget
- o determine organization
- o determine number of employees
- o determine internal security practices
- o take personnel actions
- o assign work
- o contract out work
- o determine personnel to conduct agency operations
- o make selections from a register or other appropriate source
- o take actions necessary during emergencies

8. The union has proposed in contract negotiations a clause which states: "managemen will not contract out any work as long as agency employees are available to comple the work to be done in a timely fashion." Is this a negotiable proposal?

   A. Yes, because contracting out work affects the working conditions of unit employees and the proposal does not restrict management's right to ensure that the work is done.

   B. Yes, because it does not specify who will determine whether agency employees can complete the work to be done in a timely fashion.

   C. No, because it would violate management's right to determine that the w can be contracted out.

9. Michael Kelly, the labor relations officer for an agency, has received a proposal from the union that would require union approval for any internal changes in the structure of the agency. The union acknowledges that the proposal concerns a management right but argues that the agency can agree to negotiate on the proposal if it is in the best interests of the agency. Can Mr. Kelly negotiate on the union's proposal?

A. No, the organization of the agency is a non-negotiable subject of bargaining.

B. Yes, but the union would have to demonstrate that the proposal is in the best interests of the agency.

C. Yes, but the agency has the right to stop negotiations on the subject at any time it wishes.

10. The union wants the agency to agree to an article which would require management to notify the union whenever it is going to implement a management right impacting on working conditions or personnel policies and practices of bargaining unit employees. The union proposal would require that this notification occur a reasonable period of time prior to the implementation of the agency's decision. Is this a proposal on which the agency could legally agree?

A. No, because the exercise of a management right is not a proper subject for negotiations.

B. No, because it would effectively take away the ability of the agency to carry out its mission.

C. Yes, because the union has the right to negotiate on the impact and implementation of a management right affecting the employees' working conditions.

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NOTES

ANSWERS

8. This proposal would not be negotiable because it would infringe upon management's right to contract out work. The language does not address procedures to be used in determining whether work will be contracted out but is a prohibition against the contracting out.

   THE CORRECT ANSWER IS "C".

9. The management rights listed in this frame are non-negotiable subjects. Under the Civil Service Reform Act, management cannot negotiate on proposals which would infringe upon these rights.

   THE CORRECT ANSWER IS "A".

10. The proposal offered by the union is a mandatory topic of bargaining. The obligation contained in the proposal is required by the CSRA whether or not the requirement is contained in a collective bargaining agreement because it does not prevent management from exercising its rights enumerated in Title VII. Rather, it gives the union an opportunity to request negotiations on the impact and implementation of a management decision.

    THE CORRECT ANSWER IS "C".

CHAPTER TWO

THE BARGAINING UNIT

The Bargaining Unit

A bargaining unit is a group of employees appropriate for representation by a labor organization for purposes of collective bargaining. An appropriate unit is one which:

- o identifies a viable community of interest among employees;
- o promotes effective labor relations;
- o promotes the efficiency of the agency's operations.

A secret ballot election among employees in the bargaining unit determines which labor organization, if any, will represent employees.

11. Harriet James is the chief negotiator for the management bargaining team. The union proposes to her that the parties agree to exclude from the bargaining unit all wage grade employees even though these employees have been in the unit with other employees for a number of years. Should James agree to this proposal?

    A. Yes, but only if management believes that the wage grade employees do not have a community of interest with other employees in the unit.

    B. Yes, but only if the union will state in writing that the wage grade employees do not want to be in the same unit.

    C. No, because the agency and the union cannot arbitrarily decide which groups of employees will be in or out of the unit.

NOTES

ANSWERS

11. The agency and the union do not have the authority to decide which categories of employees are in or out of the unit. The parties can file a clarification of unit petition with the Federal Labor Relations Authority to attempt to have the bargaining unit changed. It is also possible to negotiate in a collective bargaining agreement provisions which apply only to certain categories of employees because of factors which are unique to that group. (For example, there could be a contract article on overtime distribution among wage grade employees.)

    THE CORRECT ANSWER IS "C".

Basic Employee Rights

A Federal employee is allowed to engage in any of the following activities for any labor organization:

- o form
- o join
- o assist
- o represent

However, a supervisor or manager may not participate in the management of a union or act as a representative of a union or attempt to influence employees in the exercise of these rights.

12. Randy Jones does not like the union that has been elected as the representative of the bargaining unit. He wants to encourage employees to join another union and has successfully recruited several supporters. The union that just won the election is complaining about Jones' union activities. In contract negotiations, the union proposes that the new agreement apply only to members of the union that have been elected by employees as their representative. The union team acknowledges that the purpose of the proposal is to prevent Jones from gathering a larger group of supporters. Is the management team free to agree to this proposal?

    A. Yes, since the union is the exclusive representative of employees, it can take actions such as these to discourage employees from supporting other unions.

    B. No, because the contract cannot be applied only to those who support the union.

    C. Yes, but only if management and the exclusive representative agrees to let Jones continue his activities.

ANSWERS

12. Randy Jones has the right to support any union he wants. The union cannot exclude Jones and others from coverage of the collective bargaining agreement.

THE CORRECT ANSWER IS "B".

Bargaining Unit Exclusions

Certain employees are automatically excluded from the bargaining unit. These are the exclusions:

- o supervisors;
- o management officials;
- o individuals engaged in Federal personnel work in other than a purely clerical capacity;
- o employees working in a confidential capacity for someone who formulates or effectuates labor relations policy for the agency;
- o employees who investigate or audit work or conduct of other agency employees;
- o employees engaged in intelligence, counter-intelligence, investigative, or security work which affects national security;
- o professional employees unless a majority of the professionals vote to be included in the same unit as other employees.

13. Beverly Lorenz is the chief negotiator for the management team. The union represents one unit of all employees in the headquarters. Approximately 35% of the bargaining unit employees are professionals. The union wants to have two merit promotion plans: one for professionals and one for non-professionals. Can Ms. Lorenz consider two separate plans under the provisions of Title VII?

A. No, because all employees are in one unit.

B. No, because a union cannot represent professional employees.

C. Yes, in this case Title VII does not prohibit such a procedure.

14. The union also wants to negotiate a merit promotion plan for supervisors on the theory that supervisors would benefit from such a plan as much as other employees. Can Ms. Lorenz consider this proposal under Title VII?

A. Yes, because it would be good for the morale of the supervisors.

B. No, because supervisors are not in the bargaining unit.

C. Yes, but only if the plan is distinct from the one established for other employees.

NOTES

ANSWERS

13. Title VII does not prohibit the union's proposal in this case because professionals and non-professional employees are in the same bargaining unit and are represented by the same union. If the professionals were not represented by the union, the proposal could not be considered because the union would not have the authority to negotiate a contract for those particular employees.

THE CORRECT ANSWER IS "C".

14. The union does not have the authority to negotiate a contract applicable to supervisors. Since it lacks this authority, Beverly Lorenz cannot consider the union's proposal.

THE CORRECT ANSWER IS "B".

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Distinctions Between a Union and a Unit

There are several facts to remember regarding the distinction between a union and a bargaining unit:

- o certain categories of people are automatically excluded from the bargaining unit;
- o any employee, whether or not he or she is in the bargaining unit, can be a member of a union;
- o the union that has been elected as the exclusive representative of the unit, represents all people in the unit. It represents union members in the unit but does not represent union members who are out of the bargaining unit.

15. An agency and a labor union recently completed negotiations for a new collective bargaining agreement. Ted Smith is a supervisor in the agency and he is also a member of the union that represents agency employees. Does the new collective bargaining agreement apply to Ted Smith?

    A. No, because he is not a member of the bargaining unit.

    B. Yes, because the agreement applies to all union members whether they are in the bargaining unit or not.

    C. Yes, but only in instances in which Smith is not called upon by management to represent the agency in its dealings with the union.

16. The agency labor relations officer recently called to your attention the fact that approximately 50% of the employees in the bargaining unit were members of the union. Does the collective bargaining agreement negotiated by management and labor apply to the 50% of the employees who are not members of the union?

    A. No, it only applies to union members who are also members of the bargaining unit.

    B. No, it only applies to union members whether or not they are members of the bargaining unit.

    C. Yes, the agreement applies to all unit members regardless of whether or not they are members of the union.

ANSWERS

15. The agreement does not apply to Ted Smith. While Smith is a member of the union, he is not in the bargaining unit which is represented by the labor union. The agreement applies only to employees in the bargaining unit.

THE CORRECT ANSWER IS "A".

16. The contract applies to the entire bargaining unit. Union membership is not a requirement for application of the agreement. The rights granted to employees by the contract and the responsibilities imposed on employees by the contract apply to all bargaining unit members.

THE CORRECT ANSWER IS "C".

CHAPTER THREE

OFFICIAL TIME AND DUES WITHHOLDING

Official Time for Negotiations

Under Title VII, an employee is entitled to official time when:

- o A collective bargaining agreement is being negotiated;
- o The employee is representing an exclusive union;
- o The employee would normally be in a duty status; and
- o The number of union representatives does not exceed the number of management representatives.

17. Beverly Remington is the local union president. After conferring with officers and members of the union, she has concluded that the union will need five negotiating team members although the agency has only three negotiators. Each member of the union team is a subject matter expert and the union believes that these experts are necessary to obtain a good contract. Ms. Remington has demanded official time for all five union negotiators but the agency has refused. Are Ms. Remington's demands justified in this case?

A. No, because the number of union negotiators on official time cannot exceed the number of management negotiators.

B. Yes, because it is common practice to have at least five members on each negotiating team and the agency's position is unreasonable.

C. Yes, because the agency is effectively inserting itself into the internal affairs of the union by not allowing the union president to comply with the advice of her advisors.

18. Harvey Babbage works from 11:00 p.m. to 7:30 a.m. in a government hospital. He is the chief negotiator for the local union. The parties have agreed to negotiate from 10:00 a.m. until 1:00 p.m. three days per week. The agency has refused to grant Mr. Babbage official time during negotiations. He is the only employee on the two negotiating teams who usually works in a night shift. Is the agency's position justified?

A. No, because singling out the chief negotiator for disparate treatment in this manner constitutes an unfair labor practice.

B. No, because each negotiator is entitled to official time during negotiations during the period of time which the parties have agreed upon to conduct negotiations.

C. Yes, because Harvey Babbage would not normally be in a duty status from 10:00 a.m. until 1:00 p.m.

ANSWERS

17. Beverly Remington's demands are not justified in this case. Title VII specifies that the number of union representatives on official time cannot exceed the number of management representatives. Since the agency has three negotiators on official time, the union is not entitled to have five.

THE CORRECT ANSWER IS "A".

18. Harvey Babbage is not entitled to official time because he would not normally be in a duty status during the time that negotiations are being conducted.

THE CORRECT ANSWER IS "C".

OFFICIAL TIME FOR REPRESENTATION OF EMPLOYEES

Union representatives are not automatically entitled to offfical time to represent employees except when engaged in negotiating a collective bargaining agreement. Official time is:

- o A proper subject for negotiations;
- o Subject to restrictions contained in the collective bargaining agreement;
- o Not authorized at all for the conduct of internal union business.

19. Jack Sawyer, the local union president, has proposed that the agency provide the locals's newsletter editor with two days of official time per month to prepare the union's newsletter. Sawyer argues that this is necessary to inform all unit employees about events that are important to them. Can the agency agree with Sawyer's proposal?

A. No, because the union newsletter is internal union business and official time would not be proper.

B. Yes, but only if the proposal is restricted to the newsletter editor.

C. Yes, but only when the union is preparing for negotiations with the agency since it is essential that the union be able to communicate its views to employees.

20. Stephanie Johnson, the labor relations officer for the agency, has proposed in negotiations that each steward who is using official time for representational duties must seek permission from his immediate supervisor before leaving the worksite, and inform the supervisor of the employee being assisted by the steward prior to meeting with the employee of the probable duration of the visit. The union has objected to Johnson's proposal contending that it places restrictions on stewards which are not allowed by the CSRA. Is Johnson's proposal a proper one?

A. No, because it consititues agency interference with the internal affairs of the union.

B. No, because the only restriction that can be imposed by the agency is the amount of time spent by the steward in performing representational functions.

C. Yes, because the use of official time by a union representative is subject to restrictions contained in the collective bargaining agreement.

NOTES

ANSWERS

19. Editing of the union newsletter is internal union business and is not, therefore, a proper topic for negotiations. While it is essential that the union communicate with employees in the bargaining unit, the agency is not authorized to provide the union with paid time to prepare an internal union document.

THE CORRECT ANSWER IS "A".

20. Johnson's proposal is a proper one. While the union is not obligated to agree with the proposal, the agency is entitled to negotiate restrictions on the use of official time. Her proposals in this case reflect a common management concern to account for the time being spent and the actual location of the employee using the time.

THE CORRECT ANSWER IS "C".

Dues Withholding

The exclusive representative of employees is entitled to receive dues which are withheld from employees' paychecks under the following conditions:

- o the employee must be in the bargaining unit;
- o the employee must authorize the withholding in writing;
- o the written authorization cannot be revoked for one year.

Dues withholding is done at no cost to the exclusive representative or to the employee.

21. Steve Payne is the union's chief negotiator. He is demanding that the agency deduct union dues from all supervisors who are union members when written authorization has been submitted to the labor relations officer. Can the agency consider Mr. Payne's demands at the bargaining table?

    A. Yes, because it would only apply to members of the union who happen to be supervisors.

    B. Yes, but the authorization cannot be revoked for one year.

    C. No, because supervisors are not in the bargaining unit.

22. Herman Goldfarb is an organizer of a small union other than the exclusive representative in his agency. He has caused the agency labor relations officer and the exclusive representative a number of problems by filing unfair labor practices against both parties. Mr. Goldfarb recently submitted his written authorization to have dues withheld for the union he is supporting. He is in the bargaining unit in the agency. Can the agency honor Mr. Goldfarb's request?

A. Yes, because he is in the bargaining unit and submitted his request in writing.

B. No, because only the union that has exclusive recognition is entitled to receive dues withheld from an employee check.

C. Yes, unless the union that has exclusive recognition objects to the withholding request.

23. Marilyn Andrews is the local union president. She won the election to this office largely on her campaign among union members to make all employees who are not members of the union pay their fair share of union expenses incurred in representing employees who are not members and therefore do not pay dues to the union. As a result of this campaign promise, the union is proposing that a service fee be deducted from the check of any employee who is not a member of the union. The service fee is the same amount of money paid as union dues. Can the agency agree to the proposal?

A. Yes, because the union has the obligation to represent all employees and it cannot fulfill this function without the income from the service fee.

B. No, because the employees have not authorized the withholding of the money from their checks.

C. Yes, because to fail to agree to the proposal will incur the wrath of the local union and put an irreparable strain on the labor-management relationship in the agency.

NOTES

ANSWERS

21. The agency cannot honor Steve Payne's request. Since supervisors are not in the bargaining unit, they are not entitled to have dues withheld from their pay. A supervisor can be a member of the union but he will have to arrange to pay the dues directly to the union.

    THE CORRECT ANSWER IS "C".

22. The agency cannot honor Herman Goldfarb's request. Since he is not requesting that the dues be withheld for the union that has exclusive recognition, the union is not entitled to receive the dues payment. The fact that he is in the bargaining unit is not the sole determining factor.

    THE CORRECT ANSWER IS "B".

23. The agency cannot honor the union's demand despite the campaign promises made by Marilyn Andrews. Title VII does not provide for the withholding of dues from an employee's check unless the employee authorizes the wihholding in writing. An agency and a union cannot agree to withhold a "service fee" in lieu of dues.

    THE CORRECT ANSWER IS "B".

CHAPTER FOUR

CHARACTERISTICS OF A NEGOTIATED GRIEVANCE PROCEDURE

The Negotiated Grievance Procedure

Each collective bargaining agreement in the Federal government must have a negotiated grievance procedure. Each negotiated grievance procedure:

- must provide for binding arbitration as the last step of the procedure;
- must be fair and simple;
- limits unit employees to union representation, self-representation, or union approved representation;
- is the only grievance procedure available to employees for matters within its scope except as specified by Title VII of the Civil Service Reform Act;
- does not apply to employees excluded from the bargaining unit, such as supervisors and managers, since the contract does not apply to them.

24. The union has proposed that the final decision issued by the agency on a grievance shall be made by the agency head. The management negotiating team does not want to go along with this proposal but the union claims that the structure of the procedure is mandated by Title VII. Does the management team have to accept the union's proposal?

A. Yes, because it is required by Title VII.

B. No, because the structure of the grievance procedure is negotiable.

C. Yes, because the structure of the grievance procedure must be determined by the union.

25. The union has proposed giving supervisors the right to use the negotiated grievance procedure. The union acknowledges that management is not required to include them under the coverage of the procedure but argues that it is not fair to exclude supervisors from a right enjoyed by employees. Can the management team agree to the proposal?

A. No, because supervisors cannot be covered by the contract.

B. Yes, because Title VII only prohibits employees from being represented by a union officer; they can still be covered by the contract.

C. Yes, but it would be limited to those supervisors who are members of a union.

ANSWERS

24. The structure of the grievance procedure is not dictated by Title VII. It is up to the union and management teams to negotiate the form of the grievance procedure. This could include having the agency head making the final decision issued by the agency but it is not required.

THE CORRECT ANSWER IS "B".

25. Supervisors cannot be covered by the collective bargaining agreement and, therefore, the negotiated grievance procedure. The coverage of supervisors is not discretionary with the parties to the agreement. Although supervisors can be a member of the union, they still cannot be covered by the agreement because they are not part of the bargaining unit.

THE CORRECT ANSWER IS "A".

Limitations on the Scope of the Negotiated Grievance Procedure

The subjects which can be grieved under the NGP are generally negotiated between labor and management. However, there are some topics which cannot be grieved under a NGP. These are:

- o alleged violations of the Hatch Act;
- o problems concerning retirement, life insurance, or health insurance;
- o suspension or removal for reasons of national security;
- o any examination, certification, or appointment;
- o the classification of any position which does not result in the reduction of the grade or pay of an employee.

26. As a member of the management negotiating team, you have received the union proposals for a new collective bargaining agreement. The union has proposed that the NGP cover any subject which an employee wishes to grieve. How would you respond to the union's proposal?

    A. I would tell the union that while the proposal was within the limitations of Title VII, I would not agree to it.

    B. I would tell the union that under Title VII, the employee must have a choice of using the NGP or a statutory appeal procedure on such issues as alleged Hatch Act violations.

    C. I would tell the union the proposal conflicts with the requirements of Title VII.

27. As a member of the management negotiating team, the union submits to you a proposal that the NGP be restricted to the interpretation and application of the agreement. The union also proposes to exclude from the coverage of the NGP those topics which are required by Title VII to be excluded. How would you respond to the union?

    A. I would tell the union that the coverage of the NGP is dictated by Title VII and is not open to discussion.

    B. I would tell the union that the NGP must be as broad as possible, as required by Title VII, and that the proposal was therefore not a legal one.

    C. I would tell the union that the proposal was proper and that the agency would consider it.

ANSWERS

26. The proposal is contrary to the requirements of Title VII in that it would cover such topics as alleged Hatch Act violations and removal for reasons of national security which cannot be covered by the NGP.

    THE CORRECT ANSWER IS "C".

27. The union's proposal is proper. Title VII does not require the parties to agree to a procedure with the broadest scope possible.

    THE CORRECT ANSWER IS "C".

Arbitration Under the Negotiated Grievance Procedure

All negotiated grievance procedures must provide for binding arbitration. The arbitrator:

- o is selected according to the provisions of the agreement;
- o is paid according to the provisions of the agreement;
- o issues a decision binding upon both management and the union;
- o decides whether an issue in dispute is covered by the negotiated grievance procedure.

28. In negotiations for a new contract, the union proposes that the agency pay for all arbitration expenses. Is this provision allowed under Title VII?

A. No, the parties must pay all expenses equally.

B. No, the arbitrator must decide who pays the arbitration expenses.

C. Yes, the agency is obligated to pay for all expenses.

D. Yes, the provision is proper. However, management does not have to agree to the proposal and normally would not agree to it.

ANSWERS

28. The provisions for payment of the arbitrator are negotiable. While such a provision is allowed, the agency is not obligated to agree to such a proposal.

THE CORRECT ANSWER IS "D".

CHAPTER FIVE

THIRD PARTY DECISION-MAKERS

The Federal Labor Relations Authority

In addition to considering arbitration award exceptions, the FLRA performs the following functions:

- o administers and interprets Title VII;
- o determines bargaining unit structure;
- o supervises elections to determine the exclusive unit representative, if any;
- o decides negotiability questions;
- o decides unfair labor practice cases.

29. In the midst of contract negotiations, the union proposes that management agree not to contract out any work for the remainder of the fiscal year. Management takes the position that the proposal is not a negotiable one and refuses to consider the proposal. Has management acted properly in this case?

A. No, because a decision on the negotiability issue must be issued by the FLRA before the agency can refuse to negotiate on a specific proposal.

B. Yes, but the union can go to the FLRA to attempt to have the agency's determination overruled.

C. No, because by refusing to negotiate on a union proposal management has automatically committed an unfair labor practice.

ANSWERS

29. The agency acted properly in this case. If the union disagrees with the management determination that the proposal is not negotiable, it can raise the negotiability question with the Federal Labor Relations Authority in an attempt to have the management position overruled. There is no requirement that the agency seek an FLRA decision before declaring a union proposal non-negotiable. Also, management has not automatically committed an unfair labor practice by declaring a subject non-negotiable without seeking a decision.

THE CORRECT ANSWER IS "B".

Federal Mediation and Conciliation Service

The Federal Mediation and Conciliation Service (FMCS) provides the following services:

- o seeks to help parties reach agreement through negotiation;
- o becomes involved at the request of either party or by a direct offer of services;
- o provides technical assistance to management and union to prevent disputes.

30. Dennis Hudson is the local union president. Negotiations have gone on for a number of months and no agreement has been reached. He has been expressing his frustration for several weeks and at the last negotiating session he threatened to call a strike and to seek the assistance of the FLRA in resolving the impasse that had been reached at the table. Since making his threat, Hudson has not returned to negotiate with management. Are the threats made by Mr. Hudson proper under the provisions of Title VII?

A. No, because Federal employees are not allowed to strike and the proper agency for resolving the impasse is the FMCS.

B. Yes, since under Title VII employees have a limited right to strike and the FLRA will ensure that management does not interfere with that right.

C. No, because although employees have a limited right to strike in the Federal government, the FMCS should be called in to resolve the impasse rather than the FLRA.

ANSWERS

30. The threats made by Dennis Hudson are not enforceable under the provisions of Title VII. Employees do not have the right to strike. The Federal Mediation and Conciliation Service will provide assistance to parties in an attempt to resolve problems in reaching agreement at the bargaining table. The FLRA would not get involved except in cases in which an unfair labor practice was filed, and even in those cases, it does not supplant the role of the FMCS in the bargaining process.

THE CORRECT ANSWER IS "A".

Federal Service Impasses Panel

The Federal Service Impasses Panel (FSIP) performs the following functions:

- o considers negotiation impasses;
- o takes such action it considers necessary to settle an impasse;
- o becomes involved in the negotiation process at the request of either party, the FMCS, or the FSIP Executive Director after an impasse has been reached.

31. Throughout negotiations, the union's chief negotiator has threatened to invoke services of the FSIP which he claimed would "show management of the validity of its arguments". He has raised the issue again and the management team is convinced that this time he will attempt to follow through on his threat. Can the union's negotiator take a dispute such as this directly to the FSIP without the prior intervention of any other party?

A. No, both the FLRA and the FMCS must first review the case and recommend to the panel that it consider the impasse.

B. No, the FMCS must first attempt to have the parties reach agreement before the FSIP will intervene.

C. Yes, the FSIP will enter into a dispute at any time either party wishes whether any other party has been involved or not.

ANSWERS

31. The FSIP will not enter a dispute until the negotiations are at an impasse. Therefore, the FMCS is the first party to become involved as it tries to get the negotiations moving again. In this case, the union president would first have to request that the FMCS attempt to resolve the dispute before invoking the services of the FSIP.

    THE CORRECT ANSWER IS "B".

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